STATE OF MICHIGAN

COURT OF APPEALS

MICHELE BAARCK and CHARLES BAARCK,

Plaintiffs-Appellees,

v

MICHAEL RICE,

Defendant-Appellant,

and

JAMES ULINSKI, DARRIN YORK, and SUSAN MEMMINGER,

Defendants.

UNPUBLISHED
March 2, 2010

No. 289061
Macomb Circuit Court
LC No. 2007-003382-NZ

MICHELE BAARCK and CHARLES BAARCK,

Plaintiffs-Appellees,

v

MICHAEL RICE, DARRIN YORK, and SUSAN MEMMINGER,

Defendants,

and

JAMES ULINSKI,

Defendant-Appellant.

No. 289062
Macomb Circuit Court
LC No. 2007-003382-NZ

MICHELE BAARCK and CHARLES BAARCK,

Plaintiffs-Appellees,

v

No. 289063
Macomb Circuit Court
LC No. 2007-003382-NZ

MICHAEL RICE, JAMES ULINSKI, and SUSAN MEMMINGER,

Defendants,

and

DARRIN YORK,

Defendant-Appellant.

Before: Beckering, P.J., and Markey and Borrello, JJ.

PER CURIAM.

In these consolidated appeals, defendants Michael Rice, James Ulinski, and Darrin York appeal as of right the trial court's November 12, 2008, orders denying in part Rice's motion for summary disposition and denying Ulinski's and York's motions for summary disposition. We affirm.

I. Pertinent Facts and Procedural History

At the time this case commenced, defendants were Harrison Township board members. Rice and Ulinski were trustees and York was the treasurer. Plaintiff Michele Baarck[1] was a senior accounts bookkeeper in the township's finance department. She was also a union steward responsible for filing grievances and other functions. Plaintiff's employment with the township was subject to the terms of a collective bargaining agreement (CBA).

In essence, plaintiff claims that defendants acted improperly in requesting that various law enforcement agencies and the county prosecutor's office investigate and prosecute her for the receipt of $6,190.20 in additional compensation, publicly claiming that she embezzled public funds and engaged in other improper conduct, and attempting to have her gain board approval for the compensation when no policy required her to do so. Plaintiff claims that defendants knew she was innocent and attacked her because she was a union official and supported a recall measure. She claims that their actions were tortious and gave rise to civil rights liability. Defendants argue that they are immune from liability.

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[1] Plaintiff Charles Baarck, Michele's husband, alleges loss of consortium. We will use the term "plaintiff" in reference to Michele.

In March 2005, township finance director Melissa Marsh resigned. On March 11, before her departure, Marsh met with township supervisor Anthony Forlini, deputy supervisor Adam Wit, clerk Jan Jorgenson, and plaintiff to discuss the allocation of Marsh's workload. They agreed that plaintiff would prepare documentation for the township's annual audit, among other assignments. Forlini testified that, as he understood it, if plaintiff found it necessary to work overtime to complete the assignments, she would receive overtime pay of one and a half times her regular rate of pay of $19 per hour, not the finance director's rate of pay of approximately $35 per hour, i.e., "acting rank" pay. Wit testified that there was no mention of acting rank pay during the meeting. On the other hand, plaintiff testified that Forlini and Jorgenson authorized acting rank pay. Plaintiff also points out that article 21, section 2 of the CBA in effect provided:

> An employee may be temporarily assigned for up to ninety (90) consecutive working days to fill a vacancy, without posting, to a job within the Township that he/she can satisfactorily perform. On temporary assignments, where an Employee is required to work in a higher position, the Employee will be paid the rate of the Employee whose job is being filled for all hours worked in the higher position. In the latter event, compensation will be retroactive to the beginning of the first day of such temporary assignment . . . .

From March 31 through May 11, plaintiff submitted to her supervisors bi-weekly time sheets listing the hours she worked and describing the work performed. Although the sheets indicated that some of the hours worked were acting rank hours, the sheets did not list the rate of pay for those hours. All of the sheets were signed by either Jorgenson or deputy clerk Margaret Lucido. As the senior accounts bookkeeper, plaintiff was responsible for processing payroll checks, including her own.

York testified that on May 13, when he was reviewing payroll checks, he noticed that the rate of pay on plaintiff's check substantially exceeded her normal rate of pay. Later that day, he asked Forlini and Jorgenson if they had authorized plaintiff's acting rank pay, and they both indicated that they had not. York then informed Rice about plaintiff's payroll check and Forlini and Jorgenson's statements. On May 15, a Sunday, Rice telephoned the county sheriff's department and that afternoon, a sheriff's deputy met with defendants at Rice's home. York testified that defendants asked the sheriff's department to look into the "possibl[e] misappropriation of the sacred public funds" by plaintiff. Defendants filed a police report. In the report, the deputy indicated that York had uncovered a suspicious check of plaintiff's, that the township board had not approved the active rank pay included in the check as required, that as far as they knew, the human resources advisory committee, including Forlini, had not approved the pay, and that Jorgenson indicated she would conduct an investigation. Prosecution was requested.

On May 16, Detective Sergeant Tim McFadden telephoned York about the investigation. York indicated that the township board had not investigated the incident prior to defendants contacting the sheriff's department, but that the human resources committee had been informed of the incident on May 13 and planned to investigate. The detective also telephoned township board trustee Rob Garvin who indicated that the committee would investigate the matter and contact the sheriff's department if criminal charges were warranted. York testified that the same day, Garvin telephoned him, screaming and cussing because defendants had filed the police report without consulting Garvin or having the human resources committee investigate. At an

interview on May 18, York advised Sergeant Chris Amey that he filed the complaint to document the incident "just in case of any wrongdoing." York also stated that he had since learned that plaintiff's supervisors approved the acting rank and, therefore, that plaintiff had not done anything wrong. York subsequently testified, however, that he had not made those statements. The human resources committee determined on May 20 that plaintiff committed no wrongdoing. In a subsequent memo, the committee stated that although neither Forlini nor Jorgenson recalled approving plaintiff's active rank pay, plaintiff had acted in accordance with past practice and article 21 of the CBA. After completing his investigation of the matter, Sergeant Amey concluded that plaintiff "did not commit a criminal act and worked within . . . township protocol (Article 21) for obtaining active rank and pay."

Plaintiff alleges that throughout the investigation, rumors that she had embezzled township funds spread throughout the township offices and the community, and that on May 20, a Plante Moran [a private accounting firm the township worked with] employee, advised her that York had telephoned him and said that plaintiff took extra pay without approval. In a newspaper article dated May 25, Garvin was quoted as stating that he did not agree with recent actions of the township board's majority, specifically the acting rank pay matter. Forlini was quoted as saying: "he was shocked to learn of the police report"; "he should have been the one to ask for a police investigation if one was warranted"; and "these allegations are unfounded, there was no wrongdoing at all by this individual."

On June 17, recall petitions were filed against defendants for filing a complaint with the sheriff's department accusing plaintiff of embezzlement. There is no dispute that plaintiff supported the recall. She alleged in her complaint that on June 20, the Plante Moran employee advised her that at a recent meeting, Rice and Susan Memminger, a political supporter of Rice's, focused the group's attention on the acting rank issue. Memminger also claimed that she would blast plaintiff out of the water. According to plaintiff, on July 12, a township resident informed her that York said he would destroy plaintiff, Jorgenson, and Forlini over the recall language.

In August, two newsletters were distributed throughout the township, each entitled "Just the Facts." One of the newsletters stated, in part:

> <u>The issue for recall</u>:
>
> > C.A.A.P. group says we are wrong for asking that the Sheriff investigate why an employee can give themselves a pay raise without permission. The person in question received over $7,000 extra pay in two months. Supervisor Forlini and Clerk Jorgenson had NO idea that this was occurring. We believe that township employees must have proper authorization to receive taxpayer money of this magnitude.

The second newsletter contained similar language. Rice and Ulinski testified that defendants published and supplied funding for the newsletters. York testified that the newsletters were defendants' response to the recall petitions. Plaintiff testified that after the newsletters were distributed, many people telephoned her to comment on them, and a lot of township residents made derogatory comments and insinuations about her.

At a township board meeting on August 22, several township employees and residents challenged the board and spoke on plaintiff's behalf. Plaintiff stated that she had done nothing wrong, she had approval from her supervisors for the acting rank pay, she had been insulted, embarrassed and humiliated, no board member had supported her or cleared her name, and it should stop. York stated that he did not know the township's investigation into plaintiff's conduct would be made public and apologized to her. Plaintiff testified that later, at the closed session portion of the meeting, defendants stated that because plaintiff was going to file a lawsuit, the incident needed to be reinvestigated by outside agencies. On August 24, two days after the township board meeting, defendants paid to print a full-page ad, also entitled "Just the Facts," in the Journal, which is distributed free-of-charge to all township residents. The ad included language similar to the previous two newsletters.

Ulinski testified that defendants subsequently spearheaded a reinvestigation of plaintiff's conduct. On January 12, 2006, defendants sent a letter to the township attorney indicating that, in their opinion, plaintiff incorrectly received the acting rank pay and that the officials responsible for bringing the matter before the township board deliberately prevented it from being properly reviewed. Defendants requested that the attorney forward their request to the prosecutor's office and state police. The next day, the township attorney forwarded the request to the prosecutor's office, asking that the office either investigate the matter or forward it to the state police. At a township board meeting on January 23, the board voted 4-3 to have plaintiff's conduct reinvestigated by the prosecutor's office and state police, with defendants voting in favor of the reinvestigation. On February 2, the township attorney sent the board a letter stating that he received a telephone call from the prosecutor's office. The office indicated that it would not reinvestigate the matter or submit it to the state police, the investigation conducted by the sheriff's department was complete, and that there had been no impropriety. According to plaintiff, in March, Ulinski informed the state police that the sheriff's department failed to conduct a complete investigation. The state police then advised Jorgenson that they would not reinvestigate the matter. Thereafter, defendants made several additional attempts to have law enforcement agencies investigate plaintiff.

On July 14, Sheriff Hackel sent the township attorney a letter stating that there was no new evidence demonstrating that plaintiff did anything criminally wrong and that the case was closed. Another board meeting was held on July 24. According to plaintiff, Garvin advised her that if she attempted to read the sheriff's letter into the record at the meeting, defendants would attempt to take administrative action against her and force her to pay back the acting rank pay. In July and August, Ulinski sent three emails to the township board requesting that administrative action be taken against plaintiff. At the end of a township board meeting on September 11, Ulinski withdrew his motion for administrative action, York withdrew his support for the motion, and Garvin stated that the case against plaintiff was closed.

This case commenced in August 2007, when plaintiff filed a complaint against defendants alleging: 1) intentional infliction of emotional distress; 2) invasion of privacy; 3) defamation; 4) interference with advantageous relationships and/or contractual relationships; 5) federal civil rights violations pursuant to 42 USC § 1983; 6) conspiracy; and 7) gross negligence. In August 2008, defendants filed separate motions for summary disposition under MCR 2.116(C)(7), (8), and (10). The trial court denied defendants' motions, with the exception of the portion of Rice's motion regarding plaintiff's defamation claim, in its November 12, 2008,

orders. Defendants filed separate claims of appeal and this Court entered an order consolidating the three appeals. *Baarck v Rice*, unpublished order of the Court of Appeals, entered December 10, 2008 (Docket Nos. 289061, 289062, 289063).

II. Governmental Immunity Under MCL 691.1407(5)

Defendants argue that they are immune from liability for their complained-of conduct under MCL 691.1407(5). We agree with defendants that they acted within the scope of their legislative authority in discussing and voting on the issue of plaintiff's acting rank pay at township board meetings and pursuing an investigation of plaintiff's conduct pursuant to the board's approval. Defendants are entitled to immunity under MCL 691.1407(5) for those actions, and evidence of those actions is inadmissible as proof of plaintiff's claims.[2] However, because plaintiff's claims are premised on a litany of actions taken by defendants, some of which do not give rise to immunity under MCL 691.1407(5), the trial court properly denied defendants' motions for summary disposition.

We review a trial court's decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). MCR 2.116(C)(7) permits summary disposition if the claim is barred because of immunity granted by law. A party may, but is not required to, support a motion under MCR 2.116(C)(7) with affidavits, depositions, admissions, or other admissible documentary evidence. *Maiden*, 461 Mich at 119. If such material is submitted, the court must consider it. *Id*., citing MCR 2.116(G)(5). All well-pleaded factual allegations must be accepted as true and construed in favor of the nonmoving party, unless the movant contradicts them with documentation. *Id*.; *Jones v State Farm Mut Auto Ins Co*, 202 Mich App 393, 396; 509 NW2d 829 (1993). Summary disposition should not be granted under MCR 2.116(C)(7) unless no factual development could provide a basis for recovery. *Jones*, 202 Mich App at 397. The applicability of governmental immunity is also a question of law that we review de novo. *Herman v Detroit*, 261 Mich App 141, 143; 680 NW2d 71 (2004).

A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. *Maiden*, 461 Mich at 119. The motion should be granted only where the claim is so legally deficient that recovery would be impossible even if all well-pleaded factual allegations were true and viewed in the light most favorable to the nonmoving party. *Id*. A motion under MCR 2.116(C)(10) tests the factual sufficiency of a claim. *Maiden*, 461 Mich at 119-120. All admissible evidence submitted by the parties is reviewed in the light most favorable to the nonmoving party and summary disposition is appropriate only when the evidence fails to establish a genuine issue regarding any material fact. *Id*.; MCR 2.116(G)(6).

MCL 691.1407(5) states: "A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority." Contrary to plaintiff's assertion on appeal, there is no gross negligence exception to immunity under MCL 691.1407(5). MCL 691.1407(5) applies to

[2] We do not address whether such evidence is admissible for other purposes.

individual township board members where the board members acted within the scope of their legislative authority. *Armstrong v Twp of Ypsilanti*, 248 Mich App 573, 588, 592; 640 NW2d 321 (2001). "'The determination whether particular acts are within their authority depends on a number of factors, including the nature of the specific acts alleged, the position held by the official alleged to have performed the acts, the charter, ordinances, or other local law defining the official's authority, and the structure and allocation of powers in the particular level of government.'" *American Transmissions, Inc v Attorney General*, 454 Mich 135, 141; 560 NW2d 50 (1997), quoting *Marrocco v Randlett*, 431 Mich 700, 711; 433 NW2d 68 (1988). In *American Transmissions*, 454 Mich at 143-144, our Supreme Court held that the official's motive is irrelevant, and the only relevant issue is whether the official was acting in the scope of his or her authority.

The legislative authority and power of the township is vested in an elected seven-member township board. See the Charter Township Act, MCL 42.1 *et seq*. The members of the board include the township supervisor, the township clerk, the township treasurer and four trustees. MCL 42.5. MCL 41.76, which sets forth the duties of a township treasurer, states:

> The township treasurer shall receive and take charge of money belonging to the township, or that is by law required to be paid into the township treasury, and shall pay over and account for the money, according to the order of the township board, or the authorized officers of the township.

In denying defendants' motions for summary disposition on the basis of governmental immunity, the trial court stated:

> I am going to grant summary disposition as to Mr. Rice's defamation claim because plaintiff hasn't alleged he made any defamatory statements.
>
> To all other claims I'm going to deny summary disposition, and I'm going to tell you why. As to legislative immunity I believe the test is whether the Defendant acted in the course of her employment and within the scope of her authority and acted in good faith, which are, of course, are questions of fact at this point. That question is to be left to the jury.[3]
>
> Defendants[']' circulation of alleged defamatory newsletters appeared unrelated to the exercise of their legislative authority. Summary disposition as to those newsletters is denied.
>
> * * *

[3] Although the court indicated that material questions of fact existed, it is not clear whether the court was referring to plaintiff's acceptance of acting rank pay and whether she acted in the course of her employment, in the scope of her authority, and in good faith, or to defendants' actions being in the scope of their legislative authority and in good faith.

> As to defamation, again, there is no allegation that the Defendant Rice was placed, was engaged in defamation so that is the only count on which summary disposition is granted.
>
> Ulinski and York solely argue that they have legislative immunity. There is a genuine question of fact as to whether the Defendants were acting within the scope of their legislative duties. So that count is not subject to summary disposition.

Reviewing this issue de novo, *Maiden*, 461 Mich at 118, we agree with defendants that they acted within the scope of their legislative authority in discussing and voting on the issue of plaintiff's acting rank pay at township board meetings and pursuing an investigation of plaintiff's conduct pursuant to the board's approval. In discussing the issue of acting rank pay and voting for an outside investigation at township board meetings, defendants acted in their capacities as board members at duly convened meetings that they had a duty to attend and at which they were authorized to act. MCL 42.5; MCL 42.7. The actions defendants took in pursuing an investigation, pursuant to the board's vote to do so, were also done within the scope of their authority. Plaintiff does not suggest that the township board lacked the authority to request an outside investigation of a township employee's receipt of additional compensation. Rather, plaintiff argues that defendants were improperly motivated in voting to have her investigated and then pursuing such investigations. As indicated, however, in determining whether an official's actions were within the scope of his or her authority, the official's motives are irrelevant. *American Transmissions*, 454 Mich at 143-144.

On the other hand, defendants' initial attempts to have plaintiff investigated by law enforcement agencies in May 2005 were outside the scope of their authority as township board members. Defendants first met with the sheriff's department deputy and filed their complaint on a Sunday at Rice's home. It is undisputed that defendants did not seek or obtain board approval beforehand. While MCL 41.76 requires township treasurers to account for the township's money, the treasurer is to act "according to the order of the township board, or the authorized officers of the township." Defendants have not pointed to any authority requiring or authorizing township treasurers or trustees to seek outside investigations of the allocation of township funds. Although defendants were free to report conduct that they believed to be suspicious or unlawful to law enforcement, they were not acting in their official capacities as township board members. Rather, they were acting in their capacities as citizens reporting a possible crime. The same applies to defendants' attempts to have plaintiff reinvestigated before the township board had voted on the issue.

Likewise, we agree with the trial court that defendants' circulation of the "Just the Facts" newsletters and newspaper ad was outside the scope of their authority as township board members. On appeal, defendants compare this case to *American Transmissions*, in which our Supreme Court found that the state attorney general was immune from liability for statements made during a television interview regarding an earlier fraud investigation. *American Transmissions*, 454 Mich at 144. Unlike the facts of *American Transmissions*, however, defendants in this case were not responding to media inquiries regarding an investigation. See *id*. Defendants admit that they circulated the newsletters and newspaper ad, which were paid for with private funds, in response to the recall action. Although an officer whose recall is sought may challenge the recall action, see MCL 168.961a, a municipality's funds may not be spent in

defense of a recall, OAG, No. 6715, (May 17, 1992); OAG, No. 6704, (October 22, 1991). Such officers must challenge the recall in their individual capacities. Defendants admit there is no authority establishing that their response to the recall action falls within the scope of their legislative authority.

Plaintiff's claims are premised on a litany of actions taken by defendants in addition to the actions we have addressed. Defendants offer no reasoning or authority establishing why they are immune from liability for those additional acts, except to summarily state in their brief on appeal that "[a]ll of the claims asserted in the Complaint arise out of conduct by Appellants that occurred at Township Board meetings and/or in their capacity as elected officials." Because defendants have not attempted to refute the trial court's general conclusion as to their other complained-of conduct, i.e., that material questions of fact exist as to whether defendants acted within the scope of their authority, we need not address it. A party may not leave it to this Court to search for authority in support of its position by giving "issues cursory treatment with little or no citation of supporting authority." *Peterson Novelties, Inc v Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003).

Defendants acted within the scope of their legislative authority in discussing and voting on the acting rank pay issue at township board meetings and pursuing an investigation of plaintiff's conduct pursuant to the board's approval. They are therefore entitled to immunity under MCL 691.1407(5) for those actions, and evidence of those actions is inadmissible as proof of plaintiff's claims. But because each of plaintiff's claims are premised on a litany of actions taken by defendants, some of which do not give rise to immunity under MCL 691.1407(5), the trial court properly denied defendants' motions for summary disposition.

III. Absolute Immunity From 42 USC § 1983 Claims

Defendants argue that they are immune from liability for plaintiff's 42 USC § 1983 claims[4] under federal law. We disagree.

Plaintiff claims that defendants are liable under 42 USC § 1983 for violating several of her constitutional rights. Where a § 1983 federal civil rights claim is asserted in state court, immunity defenses are matters of federal law and cannot be based on a state governmental immunity statute. See, generally, *Flatford v City of Monroe*, 794 F Supp 227 (ED Mich, 1992), aff'd in part, rev'd in part on other grounds, and remanded 17 F3d 162 (CA 6, 1994); see also *Armstrong*, 248 Mich App at 594.

Local legislative officials have absolute immunity from § 1983 claims arising out of their legislative activities. *Bogan v Scott-Harris*, 523 US 44, 49; 118 S Ct 966; 140 L Ed 2d 79 (1998); *Collins v Village of New Vienna*, 75 Fed Appx 486, 487-488 (CA 6, 2003), citing *Bogan*.

[4] Defendants assert that plaintiff raised two 42 USC § 1983 claims: count V of plaintiff's complaint, which is a federal civil rights claim under 42 USC § 1983, and count VI of her complaint, which is a conspiracy claim. Count VI may only be considered a 42 USC § 1983 claim to the extent plaintiff alleged that defendants conspired to violate her civil rights.

Legislative immunity ensures that an official's exercise of legislative discretion will "not be inhibited by judicial interference or distorted by the fear of personal liability." *Bogan*, 523 US at 52. Absolute legislative immunity applies to "all actions taken in the sphere of legitimate legislative activity." *Id*. at 54 (quotation marks and citation omitted). Whether an act falls into the sphere of legislative activity "turns on the nature of the act, rather than on the motive or intent of the official performing it." *Id*. Voting on proposed legislation is "quintessentially legislative," but an official need not be engaged in formal lawmaking to receive legislative immunity. See *id*. at 55; see also *RSWW, Inc v City of Keego Harbor*, 397 F3d 427, 438 (CA 6, 2005). The Court of Appeals for the First Circuit set forth a two-test analysis to distinguish between protected legislative proceedings and actions that are administrative in nature, which are not protected:

> The first test focuses on the nature of the facts used to reach the given decision. If the underlying facts on which the decision is based are "legislative facts", such as "generalizations concerning a policy or state of affairs", then the decision is legislative. If the facts used in the decisionmaking are more specific, such as those that relate to particular individuals or situations, then the decision is administrative. The second test focuses on the "particularity of the impact of the state of action". If the action involves establishment of a general policy, it is legislative; if the action "single[s] out specifiable individuals and affect[s] them differently from others", it is administrative. [*Cutting v Muzzey*, 724 F2d 259, 261 (CA 1, 1984); see also *Haskell v Washington Twp*, 864 F2d 1266, 1278 (CA 6, 1988), citing *Cutting*.]

In determining that defendants were not immune from liability for plaintiff's § 1983 claims, the trial court stated: "The 1983 count, again, you cited some cases[, *Bogan*, was] one of them. Reasonable minds could differ as to whether Defendants were engaged in legislative activities, therefore, request for summary disposition on this basis alone is denied." As indicated, we have concluded that defendants acted within the scope of their legislative authority in discussing and voting on the acting rank pay issue at township board meetings and pursuing an investigation of plaintiff's conduct pursuant to the board's approval for purposes of immunity under MCL 691.1407(5). Under federal law addressing immunity from § 1983 claims, however, it cannot be said that any of defendants' complained-of conduct was legislative in nature. Under either test set forth in *Cutting*, it must be concluded that defendants' actions were administrative, rather than legislative. All of their actions related to and singled-out one person–plaintiff. Absolute immunity from § 1983 claims does not arise out of administrative activities. Accordingly, we affirm the trial court's decision on this issue, albeit for other reasons.

Defendants additionally argue that any statements they made to the police regarding possible criminal activity committed by plaintiff were absolutely privileged. We decline to address this issue. Under MCR 7.203(A)(1), this Court "has jurisdiction of an appeal of right filed by an aggrieved party from . . . [a] final judgment or final order of the circuit court, or court of claims, as defined in MCR 7.202(6)." MCR 7.203(A)(1) further states that an "appeal from an order described in MCR 7.202(6)(a)(iii)-(v) is limited to the portion of the order with respect to which there is an appeal of right." Under MCR 7.202(6)(a)(v), in a civil case, an "order denying governmental immunity to a governmental party, including a governmental agency, official, or employee" is a final judgment or final order. Here, the trial court denied defendants' motions for

summary disposition based on governmental immunity. Defendants' appeals are limited to the governmental immunity portion of the trial court's orders.

Affirmed. No taxable costs pursuant to MCR 7.219, neither party having prevailed in full.

/s/ Jane M. Beckering
/s/ Jane E. Markey
/s/ Stephen L. Borrello